

SERVICE DATE – MAY 2, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42097

ALBEMARLE CORPORATION

v.

THE LOUISIANA AND NORTH WEST RAILROAD COMPANY

Decided: May 1, 2006

By a complaint filed on April 17, 2006, Albemarle Corporation (Albemarle) alleges that the line-haul rates of The Louisiana and North West Railroad Company (LNW) for the movement of chemicals and petroleum products between Albemarle's South Plant at Ethyl, AR, and LNW's interchange points with The Kansas City Southern Railway Company at Gibsland, LA, and with Union Pacific Railroad Company at McNeil, AR, as modified by LNW's fuel surcharge tariff, are unreasonably high, and that the fuel surcharge tariff, which adopts a connecting carrier's fuel surcharge, results in an unreasonable practice. Albemarle alleges that LNW possesses market dominance over the traffic and requests that the Board prescribe maximum reasonable rates, along with other relief. Albemarle states that it intends to utilize the constrained market pricing standard of the Board to address the rate reasonableness issues. See Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) (Guidelines), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987). Albemarle also seeks consolidation of this proceeding with STB Docket No. 42096, Albemarle Corporation – Petition for Declaratory Order – Certain Rates and Practices of The Louisiana and North West Railroad Company.

Recently, in Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1), et al. (STB served Feb. 27, 2006), the Board instituted a rulemaking proceeding to address major issues regarding the stand-alone cost (SAC) test in rail rate cases and the proper calculation of the floor for any rail rate relief. In that decision, the Board suspended the discovery and procedural schedule in the only pending SAC case in which the discovery was ongoing, and held in abeyance two other pending SAC cases in which some of the issues in the rulemaking have been raised or are implicated. See id. at 2. Although Albemarle has not specifically indicated whether it intends to pursue relief under the SAC test, its complaint implicates at least one of the issues being addressed in the rulemaking (i.e., the calculation of the jurisdictional floor in rail rate reasonableness proceedings). Thus, consistent with the Board's action in every other pending rail rate case that would be affected by the rulemaking, this proceeding will be held in abeyance until the conclusion of the rulemaking proceeding in STB Ex Parte No. 657 (Sub-No. 1), with two exceptions: (1) LNW must file a timely answer to the complaint; and (2) LNW

must file a response to Albemarle's request to consolidate this proceeding with the proceeding in STB Docket No. 42096.

Under 49 CFR 1109.4(b), a mediator is normally assigned in rate reasonableness cases involving the SAC methodology. See Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638 (STB served Apr. 3, 2003). In this case, however, appointment of a mediator is unnecessary, because, in a joint report filed on April 27, 2006, the parties state that they have engaged in voluntary mediation regarding this case and agree that this mediation fulfills the mediation requirement of 49 CFR 1109.4.

It is ordered:

1. This proceeding is held in abeyance until the conclusion of the rulemaking proceeding in STB Ex Parte No. 657 (Sub-No. 1), except that LNW is directed to file an answer to the complaint, and a response to Albemarle's request to consolidate this proceeding with the proceeding in STB Docket No. 42096.

2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary